



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 3 2003

OFFICE OF
CIVIL RIGHTS

CERTIFIED MAIL NO. 7002 2410 0004 4323 9801
RETURN RECEIPT REQUESTED

Mr. Angel Winn
Tribal Vice Chairman
Pit River Tribe
37014 Main Street
Burney, California 96013

CERTIFIED MAIL NO. 7002 2410 0004 4323 9818
RETURN RECEIPT REQUESTED

Ms. Michelle Berditshevsky
Executive Secretary
Native Coalition for Medicine Lake Highlands Defense
P.O. Box 1143
Mount Shasta, California 96067

Re: EPA File No. 02R-01-R9

Dear Mr. Winn and Ms. Berditshevsky:

On February 6, 2001, you filed the above referenced complaint with the U.S. Environmental Protection Agency's Office of Civil Rights (OCR). The complaint alleged violations of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and EPA's regulations implementing Title VI found at 40 C.F.R. Part 7. Specifically, you alleged discrimination by the Siskiyou County Air Pollution Control District related to its August 1, 2000 permitting of the Calpine Corporation geothermal power generating facility.

While processing your complaint, the Agency became aware that there was concurrent litigation involving the matters covered by your specific complaint. U.S. Department of Justice (DOJ) guidance states that it is appropriate in these circumstances to dismiss the complaint, but provide an opportunity to refile following the conclusion of litigation proceedings. In lieu of dismissing the complaint, however, DOJ's guidance alternatively suggests that agencies offer to temporarily suspend their investigation. EPA provided you the option of having your complaint dismissed with the opportunity to refile the complaint at the conclusion of your litigation, or to

have your complaint temporarily suspended until the conclusion of your litigation. On September 24, 2002, you requested that EPA temporarily suspend your complaint. Earlier this year, you notified EPA that the litigation is ongoing.

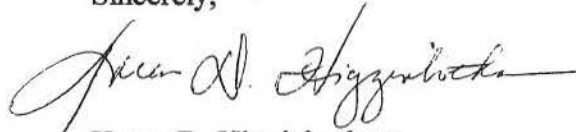
The Agency has reassessed its practice of allowing complaints in litigation to remain open and suspended indefinitely. EPA has now determined that complaints filed with the Agency that are concurrently in civil litigation will be dismissed without prejudice, *i.e.*, with the opportunity to refile after litigation is completed. Accordingly, as of the date of this letter EPA is dismissing your complaint and closing your case file.

Please be assured that the dismissal of your complaint **does not preclude you from** refile with OCR at the conclusion of the civil litigation. Although under 40 C.F.R. § 7.120(b)(2) a complaint must normally be filed within 180 days of the alleged discriminatory act, OCR may waive that requirement for good cause. OCR will do so in your case, and once the litigation has concluded, you may refile your complaint **within 30 days of its conclusion**. Note, however, that the Agency may be precluded from acting on your complaint if the civil litigation results in a decision that binds EPA or otherwise moots the complaint.

A complaint form is enclosed for your convenience. There is a question on the form that asks whether the complaint being filed is a resubmittal of a previously rejected complaint and, if so, the prior EPA complaint number. In this instance, you should enter the file number of the now rejected complaint, for OCR's reference, and so that you do not need to resubmit materials that are part of the current file.

Should you have any questions or concerns, please do not hesitate to contact Yasmin Yorker, Assistant Director, External Compliance Program, at (202) 564-7296.

Sincerely,



Karen D. Higginbotham
Director

Enclosures

cc: William Stephans
Director
Siskiyou County Air Pollution Control District
525 South Foothill Drive
Yreka, CA 96097

Stephen G. Pressman
Associate General Counsel
Civil Rights Law Office (MC 2399A)

Phyllis Harris
Deputy Assistant Administrator
Office of Enforcement and Compliance Assurance (MC 2201A)

Barry Hill
Director
Office of Environmental Justice (MC 2201A)

Wayne Natri
Regional Administrator
EPA Region 9

JoAnn Asami
Title VI Coordinator
EPA Region 9